UT 96-6
Tax Type: USE TAX
Issue: Pollution Control Equipment (Exemption)
Coal Mining Equipment (Exemption)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	)	
v.	)	**Docket #**
TAXPAYER	)	**IBT #**
Taxpayer	)	

RECOMMENDATION FOR DISPOSITION

APPEARANCES

Jeffrey Naeger for TAXPAYER.

SYNOPSIS

This cause came on for hearing following a Retailers' Occupation and Use Tax audit performed upon TAXPAYER (hereinafter "taxpayer") by the Illinois Department of Revenue (hereinafter the "Department") for the period of July 1, 1991 through December 31, 1992. After completion of her audit work, the auditor and her supervisor reviewed the audit findings with a representative of taxpayer who indicated his disagreement with some of them. Taxpayer agreed to its liability on some audit findings and they are not part of this hearing. Taxpayer primarily disagrees with the Department's assessment of its purchase of various equipment parts known as flights. The reason for taxpayer's disagreement and protest is its belief the items qualify for the coal mining equipment exemption.

The contested issue is if the flights purchased by taxpayer that cost less than $250.00 can be exempt when the total transaction price exceeds $250.00.

After reviewing this matter, I recommend the issue be resolved partly in favor of the taxpayer and partly in favor of the Department.

FINDINGS OF FACT

1. Taxpayer conducted business operations in Illinois during the audit period by mining coal. (Tr. pp. 7 and 8; Dept. Ex. No. 2)

2. Taxpayer uses the longwall mining system in its process of removing coal from its underground position in the earth. (Tr. p. 9; Taxpayer Ex. No. 1)

3. Taxpayer used face conveyor, bunker and stageloader flights in its operation of coal extraction from Illinois mines during the audit period. Taxpayer also used a different type of flights as part of their preparation plant rotating centrifugal dryers that remove moisture from the coal. (Tr. pp. 10-11, 22-24; Taxpayer Ex. No. 1, p. 2)

4. The flights purchased by taxpayer for use on its centrifugal dryers were sold by the vendors in units of eight, and all these unit purchase prices exceeded $250.00. (Tr. pp. 44-45; Dept. Ex. No. 2, pp. 3 and 4)

5. All flights used by taxpayer other than those it purchased for its centrifugal dryers could be purchased in any quantity from its vendors, and the purchase price of each one of these flights was less than $250.00. (Tr. pp. 17, 19, 24, 29 and 36; Taxpayer Ex. No. 1, Dept. Ex. No. 2)

6. Taxpayer introduced no documentary evidence to support its contention that amounts in three assessed transactions constituted charges for non-taxable labor. (Tr. pp. 3, 43)

7. Pursuant to statutory authority, the auditor did cause to be issued an Audit Correction and/or Determination of Tax Due (SC-10-G) and this served as the basis for Notice of Tax Liability (NTL) No. XXXXX issued December 27, 1994 for $148,658, inclusive of tax, penalty and interest. (Dept. Ex. Nos. 1 and 3)

8. Pursuant to prehearing proceedings, the auditor did cause to be issued an adjusted Audit Summary Analysis of Tax Liability and this revised the additional tax due to $59,073.00. (Dept. Ex. No. 2)

9. The introduction of the Department's corrected return, adjusted tax liability summary schedule, and NTL into evidence established its *prima facie* case. (Tr. p. 6; Dept. Ex. Nos. 1-3)

CONCLUSIONS OF LAW

Section 2 of the Retailers' Occupation Tax Act (35 ILCS 120/2) imposes a tax upon persons engaged in the business of selling tangible personal property at retail. Section 2-5 of the Act provides an exemption for:

> (21) "Coal exploration, mining, offhighway hauling, processing, maintenance, and reclamation equipment costing $250 or more, including replacement parts and equipment costing $250 or more, . . ."

The Illinois Use Tax Act which imposes a tax upon the privilege of using tangible personal properly in Illinois (35 ILCS 105/1 et seq.) contains a similar exemption provision in Section 3-5 (35 ILCS 105/3-5 (16)). The fundamental question in this proceeding is if the assessed items such as flights qualify under the cited exemption. For the following reasons I find seven transactions at issue qualify for exemption but that the rest do not.

Because all the equipment items at issue are used in the coal mining extraction and cleaning processes prior to sale of the coal to customers, they would qualify for exemption if they meet the statutory requirement of costing $250.00 or more. 86 *Admin. Code* ch. I, Sec. 130.350.

Section 130.350 (b)(2)(L) exempts coal wash plant equipment and because the evidence shows that taxpayer could only purchase the centrifugal dryer flights in units of eight, whose unit prices exceeded $250.00, I find they should be entitled to the exemption. I therefore recommend that the cost of these dryer flights on invoice numbers 15551, K757647, H757166, H757167, 772331, 751257, and P760151 be removed from the tax base in calculation of the Final Assessment. (Tr. pp. 44-45; Dept. Ex. No. 2, pp. 3-4)

The remaining flights purchased by taxpayer were not sold as units containing a number of items that had to be purchased in a multiple amount, so it was just fortuitous that these transactions exceeded $250.00 in cost due to the quantity ordered. (Tr. pp. 17, 19, 24, 29 and 36) Because the price of each of these purchased items is less than $250.00, they do not qualify for exemption as they each fall under the statutory threshold.

Taxpayer argues its purchase of the flights along with related items was the purchase of an entire system that should be entitled to exemption and as support cites Mid-American Growers v. Dept. of Revenue, 143 Ill.App. 3d 600, (Third Dist. 1986).

Because this is a question of tax exemption, the fundamental rule of construction is that the exemption provision is to be strictly construed against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) In this case, as in all tax exemption cases, a taxpayer's claim that a certain purchased item is tax exempt must be analyzed in the context that entitlement to exemption must be proven by the taxpayer, and doubts regarding the applicability of the exemption will be resolved in favor of taxation. A party claiming an exemption has the burden to prove clearly and conclusively that he is entitled to the exemption. (Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51, 62 (1978); Telco Leasing, Inc. v. Allphin, 63 Ill.2d 305, 310 (1976)

I do not find taxpayer's reliance upon Mid-American Growers to be persuasive because its situation and facts are distinguishable. Initially, I note that Mid-American Growers involved the exemption afforded machinery and equipment used primarily in production agriculture, not coal mining. Also, the minimum purchase required for exemption was $1,000.00, not the $250.00 threshold here. In Mid-American Growers, the lighting fixtures and the wheeled wire mesh tables each performed a separate and identifiable function (illumination for the lighting fixtures and movement for the wheeled tables) so as to entitle the usage of each to status as a system. In the instant case the various flights

are not by themselves performing a separate function or process; rather, they are parts that attach to and interact with several other items such as panline chains, stageloading devices, presses, face conveyers, shearers and crushers to extract, move and process the coal. (Tr. pp. 10-11)

No documentation was submitted by taxpayer to support either of its contentions that certain assessed invoices were duplicates or that certain transaction amounts were non-taxable labor. I therefore recommend these amounts remain in the tax base for the Final Assessment.

In summary, I find that with the exception of the tax on the centrifugal dryer flights, the liability as shown in the adjusted liability schedule (Dept. Ex. No. 2) should stand as determined by the auditor.

RECOMMENDATION

Based upon my findings and conclusions as stated above, I recommend the Department reduce NTL XXXXX and issue a Final Assessment.

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Karl W. Betz,
Administrative Law Judge